In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-127

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, ET AL., PETITIONERS

v.

WILLIAM E. SIMON, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners claim that the district court erred in dismissing on a summary judgment motion their challenge to the sufficiency of respondents' compliance with the National Environmental Policy Act and that the court of appeals' summary affirmance violated a local court rule.

The United States District Court for the District of Columbia granted respondents' motion for summary judgment dismissing petitioners' civil action challenging the adequacy of respondents' compliance with Section 102 of the National Environmental Policy Act of 1969, 83 Stat. 853, 42 U.S.C. 4332 ("NEPA"), with respect to expansion of existing facilities of the Consolidated Law Enforce-

ment Training Center at Beltsville, Maryland,[1] and seeking an injunction against such expansion, which had been begun before the enactment of NEPA. Pursuant to NEPA, respondents prepared a draft environmental impact statement in 1970, a final statement in 1971, which was later withdrawn, and a substantially revised final statement in 1972.[2] The district court had before it the full administrative record, including the final statement, comments and recommendations of petitioners[3]

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[1]The Center is to be located on a 481-acre site, of which 46 acres are now privately-owned. The other 435 acres were formerly a part of the 11,000-acre United States Agricultural Research Center. When completed, the Center will involve a low-intensity use of the site. Approximately 447 acres will remain open space of some type and 312 acres will remain completely undisturbed. The Treasury Department will administer the Center, which is designed to provide training facilities for the law enforcement personnel of twenty federal agencies which, collectively, employ most federal law enforcement officers other than FBI agents. Many of the participating agencies now lack adequate training facilities and are unable to finance and administer adequate training facilities separately.

[2]The 279-page final statement, filed jointly by Treasury and the General Services Administration, is organized under seven headings that correspond closely to the subject matter required under Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C): project description and history; environmental impacts of the project, including adverse effects; alternatives to locating the project at Beltsville; short-term use and long-term productivity of the site; irreversible and irretrievable commitments; coordination with other agencies and their comments; and conclusion.

[3]The statement specifically addressed, *inter alia*, two issues challenged by petitioners: the project's effect on land-use planning and the objections voiced by some county officials during congressional hearings. The statement describes in detail the "wedges and corridor" land use concept established in 1961 for the Washington Metropolitan area by the National Capital Planning Commission in a document entitled "A Plan For the Year 2,000 - The Nation's Capital." The record showed that Prince Georges County itself had made several exceptions to the wedge concept, including townhouse and apartment projects, and a private hospital—all involving a greater density than the Center. In addition, the County's objections had been aired at hearings held in 1971 by the Senate Public Works Committee prior to the authorization of appropriations of $52,664,000 for the project.

and other agencies, and the decision memoranda of the officials responsible for proceeding with the Center. In granting summary judgment, the district court found that respondents had complied with all of the procedural requirements of Section 102 of NEPA and had adequately considered environmental matters (Pet. App. A2).

After full briefing and argument, the court of appeals affirmed without opinion, stating in its judgment that it was in general agreement with the memorandum and order of the district court (Pet. App. D1-D2).

1. Petitioners' complaints were based upon the procedural requirements of Section 102. But they have not shown any respect in which the district court erred in deciding, on the record before it, that those requirements were not satisfied. The correctness of that determination, in any event, presents only a narrow factual ruling not warranting further review.

Petitioners' procedural claims really boil down to a contention that respondents gave insufficient weight to factors that petitioners believe should have led to a decision against proceeding with the project as planned. Such a contention, of course, amounts to a request for detailed substantive review of the agency's decision, to an extent going far beyond that authorized by the courts. *E.g., Upper Pecos Ass'n* v. *Stans*, 452 F. 2d 1233, 1236 (C.A. 10); compare, *e.g., Natural Resources Defense Council, Inc.* v. *Morton*, 458 F. 2d 827, 838 (C.A.D.C.); *Jicarilla Apache Tribe of Indians* v. *Morton*, 471 F. 2d 1275, 1279-1281 (C.A. 9).

Petitioners' claim that the district court erroneously declined to review at all the substantive sufficiency of the final environmental impact statement is without

merit. In fact, the court studied the statement and concluded that each of the subjects required to be covered "was given full consideration" (Pet. App. A11).[4]

2. Petitioners argue that the district court erred in disposing of their claims on summary judgment. In reviewing agency action based upon an administrative record, however, courts are ordinarily confined to consideration of that record and any accompanying explanations of the action. *Camp* v. *Pitts*, 411 U.S. 138, 142-143. That is what occurred here. Petitioners' pleadings and affidavits simply asserted that insufficient consideration or weight had been given to various factors, and the district court was entitled to resolve on the basis of the documents before it any questions properly raised by such assertions. Cf. *Jicarilla Apache Tribe of Indians* v. *Morton, supra*, 471 F. 2d at 1286. In any event, this Court would not normally review the question whether summary judgment was appropriate in light of the particular factual assertions and the record.[5]

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[4]Petitioners' supplement to their petition presents no reason for further review. The technical report referred to in the portion of the environmental impact statement quoted by petitioners (p. 2), and available to them, described the subsurface conditions in considerable detail, including references to "the drainage swales" [*i.e.*, marshes or swamps], a water table close to the surface, soft surface soils, and the need for drainage channels and permanent groundwater control. Under the circumstances, no issue is raised by the absence of any reference to portions of the site in lay terms as being "swampy."

[5]Insofar as petitioners' opposition to summary judgment rested only upon their pleadings, conclusory assertions of counsel, or affidavits not complying with Rule 56(c), Fed. R. Civ. P., it was, of course, insufficient.

3. Petitioners' contention that the court of appeals erred by disposing of this case without a full opinion is frivolous. It is for that court to determine compliance with its own rules, and, in any event, although summary disposition was proper (cf. *Taylor* v. *McKeithen*, 407 U.S. 191, 194-195, n. 4),[6] the court here generally adopted the reasons stated by the district court (Pet. App. D2).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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[6]It is irrelevant that other panels, on preliminary and necessarily truncated consideration of the case, may have tentatively been inclined to resolve the issues differently.